

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOSEPH FASANO,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 17-cv-1495
ALLSTATE INDEMNITY COMPANY,	:	
	:	
Defendant.	:	

**MEMORANDUM**

Joyner, J.

July 26, 2017

Before the Court are Defendant's Motion to Dismiss (Doc. No. 3), Plaintiff's Response in Opposition thereto (Doc. No. 4), and Defendant's Reply in further Support thereof (Doc. No. 5). For the following reasons, Defendant's Motion is granted.

**I. Factual and Procedural Background<sup>1</sup>**

This case arises out of a fire that occurred at Plaintiff's premises located in Scranton, Pennsylvania, on or about January 31, 2015. (Compl. ¶¶ 3-4). Following the fire, Plaintiff presented an insurance claim to its insurer, Defendant Allstate Indemnity Company. Id. at ¶ 4. That claim was ultimately adjusted for \$182,739.11, subject to a hold-back of recoverable

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<sup>1</sup> Unless otherwise noted, the facts are taken from Plaintiff's Complaint. ("Compl.," Doc. No. 3-3). In line with the standards governing Fed. R. Civ. P. 12(b)(6), all factual allegations in the Complaint are generally accepted as true. See Phillips v. Cty. of Allegheny, 515 F.3d 224, 233 (3d Cir. 2008).

depreciation of \$58,075.29. Id. On June 2, 2015, Defendant issued a payment to Plaintiff in the amount of \$123,663.82, that amount representing Defendant's calculation as to the actual cash value of Plaintiff's loss, having accounted for depreciation and Plaintiff's \$1,000 deductible. (Compl., Ex. 3; Doc. No. 5, at p. 2). Believing that Defendant has wrongfully withheld benefits owed Plaintiff under his insurance policy, including but not limited to the roughly \$58,000 in recoverable depreciation, Plaintiff filed suit in the Court of Common Pleas of Philadelphia County in December 2016. (Doc. No. 3-3). Defendant removed Plaintiff's Complaint to the United States District Court for the Middle District of Pennsylvania, where this case was assigned to the Honorable Richard P. Conaboy. (Doc. No. 1-1). By stipulation of the Parties, Judge Conaboy thereafter transferred this case to the United States District Court for the Eastern District of Pennsylvania, pursuant to 28 U.S.C. § 1441. (Doc. No. 1-25).

Plaintiff's Complaint asserts two claims against Defendant. Count I alleges breach of contract, while Count II alleges that Defendant acted in bad faith in violation of 42 Pa. Cons. Stat. § 8371. (Compl. ¶¶ 12, 14). By its present Motion Defendant seeks dismissal of Count II only, on the ground that the Complaint lacks sufficient factual detail to state a claim for bad faith under Federal Rule of Civil Procedure 12(b)(6). (Doc. No. 3).

## II. Standard of Review

A party may move to dismiss a complaint for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). In considering such a motion, a district court must "accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." Krantz v. Prudential Invs. Fund Mgmt. LLC, 305 F.3d 140, 142 (3d Cir. 2002) (quoting Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996)). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (citation omitted). "Threadbare" recitations of the elements of a claim supported only by "conclusory statements" will not suffice. Id. (citation omitted). Rather, a plaintiff must allege some facts to raise the allegation above the level of mere speculation. Great W. Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 176 (3d Cir. 2010) (citing Twombly, 550 U.S. at 555). Although a plaintiff is entitled to all reasonable inferences from the facts alleged, a plaintiff's legal conclusions are not entitled to deference, and the Court is "not bound to accept as true a legal

conclusion couched as a factual allegation.” Papasan v. Allain, 478 U.S. 265, 286 (1986).

### **III. Analysis**

To succeed on a bad faith claim under § 8371, a plaintiff must demonstrate that (1) the insurer lacked a reasonable basis for denying benefits under the insured's policy, and (2) the insurer knew or recklessly disregarded the lack of a reasonable basis. Smith v. State Farm Mut. Auto. Ins. Co., 506 Fed. App'x 133, 136 (3d Cir. 2012). “Repeatedly, courts have dismissed bad faith claims under Federal Rule of Civil Procedure 12(b)(6) where the complaint set forth ‘bare-bones’ conclusory allegations that did not provide a factual basis for an award of bad faith damages.” Schor v. State Farm Fire and Cas. Ins. Co., No. 15-610, 2015 WL 1230200, at \*2 (E.D. Pa. Mar. 18, 2015). If the terms of a contract do not require a defendant insurer to confer benefits to the insured plaintiff, then the denial of benefits in accordance with those terms is necessarily reasonable. See Robbins v. Metro. Life Ins. Co. of Conn., No. 08-0191, 2008 WL 5412087, at \*8 (E.D. Pa. Dec. 29, 2008).

Plaintiff's Complaint offers a plethora of conclusory allegations regarding Defendant's unreasonableness, misrepresentation, and unfairness without identifying how something was done unreasonably, what specifically was misrepresented, or what circumstances made some action unfair. (Compl. ¶ 15). In its opposition to Defendant's Motion,

Plaintiff does little to elaborate on the allegations in his Complaint, arguing only that Defendant's investigation into his claim for recoverable depreciation was "woefully inadequate" and that the refusal to pay was unfounded and frivolous. (Doc. No. 4). The remainder of Plaintiff's argument is to repeat the averments in Paragraph 15 of the Complaint and request that the Court read them together. Id. Whether read together or alone, however, these allegations lack any requisite factual detail which would support a claim for bad faith. See, e.g., Smith, 506 F. App'x at 136 (3d Cir. 2012) (affirming dismissal of bad faith claim where complaint lacked details describing what was unfair about allegedly unfair settlement negotiations); Schor, 2015 WL 1230200, at \*4 (dismissing bad faith claim where "allegations assert, in cursory fashion only, that Defendant lacked a reasonable basis for denying Plaintiff's claim for benefits, without providing any factual allegations from which the Court could make a plausible inference that Defendant knew or recklessly disregarded its lack of a reasonable basis for denying benefits").

The Court also notes that the insurance policy central to this dispute includes language stating that the amount withheld as depreciation is recoverable in the form of an additional payment if the damaged property is repaired or rebuilt within 180 days of the insurance payment. (Doc. No. 3-4, at p. 19; Doc. No.

5, at p. 2).<sup>2</sup> Because Defendant issued its actual cash value payment to Plaintiff on or about June 2, 2015, Plaintiff had until on or about December 2, 2015 to repair or rebuild the insured property in order to recover additional payment. Plaintiff has represented to the Court that he did not complete repairs within that timeframe. (Doc. No. 4, at ¶ 7). Given this uncontroverted basis for denial of benefits, as well as the aforementioned defects, the Court holds that Plaintiff has failed to state a cognizable claim for bad faith.

#### **IV. Conclusion**

For the foregoing reasons, Defendant's Motion is granted and Plaintiff's bad faith claim is dismissed. An appropriate Order follows.

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<sup>2</sup> Because the insurance policy is integral to Plaintiff's Complaint, we may consider its contents on this Motion to Dismiss even though it was not attached to Plaintiff's Complaint. See Schmidt v. Skolas, 770 F.3d 241, 249 (3d Cir. 2014); In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997).

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Defendant.	:

**ORDER**

AND NOW, this 26th day of July, 2017, upon consideration of Defendant's Motion to Dismiss (Doc. No. 3), Plaintiff's Response in Opposition thereto (Doc. No. 4), and Defendant's Reply in further Support thereof (Doc. No. 5), for the reasons given in the accompanying Memorandum, it is hereby ORDERED that Defendant's Motion is GRANTED, and Count II of Plaintiff's Complaint is hereby DISMISSED.

BY THE COURT:

s/J. Curtis Joyner  
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J. CURTIS JOYNER, J.